IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.09.2006

CORAM

THE HON'BLE MR. JUSTICE P. JYOTHIMANI

Writ Petition No.22998 of 2006 and
M.P. No.1 of 2006

N.Rangaraj ... Petitioner

-Vs-

1. The Superintending Engineer
Chennai Electrical Distribution Circle
Tamilnadu Electricity Board,
Valluvar Kottam, Chennai - 600 034.

2. Mr. G.Nageswara Rao (Enquiry Officer)
Executive Engineer,
Tamilnadu Electricity Board
Anna Salai, Laffand Street,
Chindadripet, Chennai - 2. ... Respondents

PRAYER.: Writ petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus refraining the respondents from proceeding with the charge memo No.01223/1056/NP/4/U1/Ko.O.Na/2005 dated 12.12.2005 against the petitioner till the outcome of the criminal case pending in Crime No.352 of 2005 on the file of the Central Criminal Branch, Egmore, Chennai-8.

For Petitioner : Mr. Vijay Shankar.

For Respondents : Mr. Vaithiyanathan.

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O R D E R

This writ petition is filed challenging the charge memo dated 12.12.2005 issued by the first respondent against the petitioner till the outcome of the criminal case pending in Crime No.352 of 2005 on the file of the Central Criminal Crime Branch, Egmore, Chennai - 8.

2. The case of the petitioner is that he has joined in the services of Tamilnadu Electricity Board as an assessor in the year

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1985 and promoted as supernumary inspector of assessment in February 2004 and he was last working in the office of the Assistant Executive Engineer, Royapettah-II. The petitioner was placed under suspension on 27.04.2005 on the ground that an enquiry into grave charges is pending. It was also stated that the petitioner is involved in misappropriation of Board's money. The Assistant Executive Engineer has filed an First Information Report on the Central Crime Branch, Egmore, Chennai - 8 on 30.04.2005 alleging that the petitioner who was in-charge of collecting meter charges from the customers has a duty of depositing the amount into the accounts, tampered the documents and misappropriated the money lawfully due to the Tamilnadu Electricity Board. The said F.I.R. was registered under Sections 409, 477 (A) and 420 of the Indian Penal Code. There was a detailed enquiry and investigation conducted in the Central Crime Branch. While the said criminal case is pending in Crime No.325 of 2005, the first respondent has framed the impugned Charge Memo on 12.12.2005 on the same set of facts. According to the petitioner, the charge is that for the period from June 2000 to March 2005 the petitioner has misappropriated to the tune of Rs.38,39,087/- by tampering with the Board records. The petitioner has submitted his detailed explanation denying the charges. The petitioner was under the impression that since the criminal case as well as the departmental proceedings are based on the same set of facts, the department proceedings would not continue. However, the first respondent has issued a notice of enquiry on 13.06.2006 calling upon the petitioner to appear for an enquiry on 22.06.2006. According to the petitioner when he appeared for the enquiry on the said date, apart from the petitioner, the enquiry officer and the presenting officer and one person called Arulanatham were present and there was no examination of witnesses or marking of documents. On the other hand, the presenting officer with the assistance of the enquiry officer has put some questions to the petitioner. There was no departmental enquiry as per the procedures, in which case the official witness has to prove the charge by giving evidence and thereafter giving opportunity to the delinquent to cross examine and thereafter allow the delinquent to produce his witness and such procedure has not been followed.

3. In view of the fact that the criminal case against the petitioner on the same set of facts are pending, any further enquiry in the departmental proceedings will only expose the defence of the petitioner which will detrimentally affect him in effectively defending himself in the criminal case. Relying upon the judgment of the Honourable Supreme Court as well as the Division Bench of this Court, wherein it has been held that when the same set of facts and circumstances are relied upon in both the criminal case as well as in the departmental enquiry, the departmental enquiry has to wait till the criminal case is

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completed, the petitioner has filed the present writ petition praying for the above said relief.

4. The respondents have filed counter affidavit. According to the respondents, pendency of the criminal case is no bar for the purpose of proceeding with the departmental enquiry. According to the respondents, the petitioner has already submitted his detailed statement of defence in the departmental enquiry and the enquiry itself has been concluded and therefore there was no question of exposing his defence so as to enable the police to effectively plug the loop holes in the prosecution detrimental to the interest of the petitioner. According to the respondents, the judgment of the Apex Court as well as the Division Bench of this Court has no application inasmuch as the petitioner has already filed his explanation and also participated in the enquiry, which has been completed.

5. I have heard Mr. Vijay Shankar learned counsel for the petitioner and also Mr. Vaithiyanathan learned counsel for the respondents.

6. It is admitted by the learned counsel for the respondents that there is no dispute about the fact that the same set of facts are involved in the departmental enquiries as well as in the criminal case and it is also admitted that the criminal case is still pending. While so, the only defence taken by the respondents in the present writ petition is that the petitioner has already filed his detailed explanation to the charges framed against him and infact participated in the departmental enquiry and the departmental enquiry has also been concluded. Therefore, according to the learned counsel for the respondents, inasmuch as the petitioner has already disclosed his defence in the departmental enquiry, there is no purpose in staying the departmental enquiry since he has already participated in the enquiry. According to him, the very purpose of the dictum laid down by the Honourable Supreme Court as well as the Division Bench of this Court in staying the departmental proceedings, when the criminal case is pending with the same set of facts are involved, is to protect the rights of delinquent in a criminal case since it involves 'right to live' and he has got every fundamental right to effectively defend himself and he cannot be compelled to expose his defence in the departmental proceedings, which may be used against him in the criminal case.

7. According to the learned counsel for the respondents inasmuch as, as stated above, the petitioner has already submitted his explanation and participated in the enquiry, there is no question of staying further proceeding in the departmental proceedings, since the only remaining thing to be done in the departmental enquiry is to pass final orders.

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8. On the other hand, Mr.Vijay shankar, learned counsel for the petitioner would vehemently contend that even though it is true that the petitioner has submitted his explanation to the charge memo in the departmental enquiry, it is only in the enquiry the witnesses are to be examined and charges proved as to whether the petitioner was involved in the misappropriation. According to him, when the petitioner was called for an enquiry on 22.06.2006, there was no enquiry at all and it was only the presenting officer who put some questions to the petitioner and it does not mean as if the petitioner has disclosed his entire defence and therefore according to him the enquiry has not been completed.

9. In view of the said submission made by the learned counsel on either side, I have called for the entire enquiry papers for the purpose of arriving at a correct conclusion in this case.

10. Mr. Vaithiyanathan learned counsel for the respondents has also produced the entire papers relating to the enquiry. A reference to the enquiry proceedings show that even though the petitioner has participated in the enquiry in which few persons have participated, majority of the questions put by the enquiry officer as well as the presenting officer were only against the petitioner and the petitioner has not given any statement. A reference to the enquiry report would show that it cannot be concluded that the enquiry has come to an end.

11. In view of the said factual circumstance, the question that remains to be considered is whether the relief claimed by the petitioner to postpone the departmental enquiry after the decision in the criminal case is to be accepted or not. It is well settled that the pendency of the criminal case is no bar for department to proceed with the delinquent officers. But in cases where the evidence in criminal case as well as the departmental proceedings are on the same set of facts, as laid down by the Honourable Apex Court in State Bank of India and Others Vs. R.B.Sharma reported in 2004 (7) S.C.C. 27, where, while considering such circumstance as to whether the departmental proceedings will seriously prejudice the delinquent in his defence at the time of trial in a criminal case, the Honourable Apex Court has held that it is a matter depending on its own facts and circumstances of the case and on the basis of which suitable order can be passed. It is based on the judgment of the Honourable Apex Court, the Honourable First Bench of this Court in the case of Indian Overseas Bank, Rep. by its Deputy General Manager, Inquiry Cell, Industrial Relations Department, Chennai - 2 and another Vs. P.Ganesan and others reported in 2006 (1) C.T.C. 689 while dealing with the case of the bank employee alleging unruly and riotous behaviour on him about which a criminal complaint was given based on which disciplinary proceedings was also initiated and following the judgment of the

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Honourable Apex Court and some other judgments it was held as follows:

> "14. In the instant case, there is no dispute that the criminal action and the disciplinary proceedings are founded upon the same set of facts. In fact, the disciplinary proceedings are solely based upon the criminal complaint lodged by the present of a rival union, who is also facing prosecution with regard to the same incident. It has been conceded before us that the bank had not conducted any independent enquiry before initiating the impugned departmental proceedings."

12. Based on the above said observation and at the facts and circumstances the Honourable First Bench has directed that the departmental proceedings should be deferred till the conclusion of the criminal case. Applying the dictum laid down as stated above and after going through the enquiry papers produced on the side of the respondents, I am satisfied that inspite of the fact that the petitioner has submitted his explanation and the enquiry was conducted on 22.06.2006, the enquiry has not yet been completed and it cannot be said that the petitioner has disclosed all his defence and in view of the said facts, I am constrained to come to the conclusion that the departmental proceedings has to defer till the criminal case is completed. In my considered view the right given to the petitioner in the criminal case is one relating to his 'right to live' enshrined under Article 21 of the Constitution of India that he has got a right to effectively defend himself in the criminal case. The revealing of any such defence which may be taken by the prosecution against him in the criminal case will certainly affect his right flowing from Article 21 of the Constitution of India and it is based on the said celebrated concept, the ruling of this Court as stated above has been given. However, depending upon the facts and circumstances of this case and in view of the factual position which I have enumerated above, I am satisfied that the writ petition should be allowed and the departmental proceedings initiated against the petitioner should defer till the criminal case is completed. Therefore, the writ petition stands allowed. No costs. Consequently, the connected CMP is closed.

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Asst. Registrar.

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Sub Asst. Registrar.

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Chindadripet, Chennai - 2.

3. The Section Officer,
Writ Section,
High Court, Madras.

(To return the original file
to the Counsel for the Respondents as
mentioned supra)

1 cc to Mr.V. Vijayashankar, Advocate, sr. 43000
1 cc to Mr.M. Vaidayanathan, Advocate, sr. 42891

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